

Anthony Crane Rental, Inc. and Republic Crane, Inc./Single Employer and International Union of Operating Engineers, Local Union No. 132, AFL-CIO

United Services of America Labor Union and International Union of Operating Engineers, Local Union No. 132, AFL-CIO. Cases 9-CA-31249-1, -2 and 9-CB-8717

June 30, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS DEVANEY
AND BROWNING

Upon charges and amended charges filed on October 22 and December 27, 1993, respectively, by International Union of Operating Engineers, Local Union No. 132, AFL-CIO (Operating Engineers), the Acting General Counsel of the National Labor Relations Board issued a consolidated complaint on December 29, 1993, against Anthony Crane Rental, Inc. and Republic Crane, Inc./Single Employer (Respondent Employer) and United Services of America Labor Union (Respondent Union) alleging that they have violated Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A), respectively, of the National Labor Relations Act. Although properly served copies of the charge and consolidated complaint, the Respondent Union failed to file an answer.

On May 25, 1994, the General Counsel filed and served on Respondents a Motion for Partial Summary Judgment and Memorandum in Support with respect to the allegations involving the Respondent Union. On May 27, 1994, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. Neither Respondents filed a response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Partial Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the consolidated complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the consolidated complaint will be considered admitted. Further, the undisputed allegations in the Motion for Partial Summary Judgment disclose that the Region, by letter dated May 9, 1994, notified the Respondent Union that unless an answer were received by close of business on May 16, 1994, a Motion for

Summary Judgment would be filed. In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Partial Summary Judgment.¹

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Anthony Crane Rental, Inc. and Republic Crane, Inc. have been engaged in the renting of cranes and crane operators to firms in the construction industry from its facility located in Nitro, West Virginia; have been affiliated business enterprises with common officers, ownership, directors, management, and supervision; have formulated and administered a common labor policy; have shared common premises and facilities; have provided services for and made sales to each other; have interchanged personnel with each other; and have held themselves out to the public as single-integrated business enterprises. Based on its foregoing operations, Anthony Crane Rental, Inc. and Republic Crane, Inc. constitute a single-integrated business enterprise and a single employer within the meaning of the Act. During the 12 months preceding issuance of the complaint, the Respondent Employer, in conducting its foregoing operations, purchased and received at Nitro, West Virginia, goods valued in excess of \$50,000 directly from points outside the State of West Virginia.

Based on the foregoing,² we find that the Respondent Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Respondent Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 1, 1993, the Respondent Union obtained recognition from and entered into and since then has maintained and enforced a collective-bargaining agreement with the Respondent Employer as the exclusive collective-bargaining representative of the following unit:

All employees employed by [Respondent Employer] at its shop located at 101 Independence Avenue, Nitro, West Virginia, excluding employees represented by the [Operating Engineers], salesmen, office clerical employees, professional

¹ As indicated above, the General Counsel's motion does not seek summary judgment with respect to the unfair labor practice allegations against the Respondent Employer. Accordingly, those allegations are remanded to the Regional Director for further appropriate action.

² All of the foregoing jurisdictional allegations regarding the Respondent Employer have been admitted by the Respondent Employer in the answer it filed to the consolidated complaint.

employees and guards and supervisors as defined in the Act.

The Respondent Union engaged in the foregoing conduct even though it did not represent an uncoerced majority of the unit.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent Union has been restraining and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(b)(1)(A) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent Union has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

ORDER

The National Labor Relations Board orders that the Respondent Union, United Services of America Labor Union, Nitro, West Virginia, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Acting as exclusive collective-bargaining representative of the employees in the unit described below, unless and until certified by the Board as the collective-bargaining representative of the employees pursuant to Section 9 of the Act:

All employees employed by [Respondent Employer] at its shop located at 101 Independence Avenue, Nitro, West Virginia, excluding employees represented by the [Operating Engineers], salesmen, office clerical employees, professional employees and guards and supervisors as defined in the Act.

(b) Maintaining, enforcing, or giving effect to the collective-bargaining agreement it entered into with the Respondent Employer about October 1, 1993.

(c) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its business offices and meeting halls copies of the attached notice marked "Appendix."³

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a

Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent Union's authorized representative, shall be posted by the Respondent Union immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent Union to ensure that the notices are not altered, defaced or covered by any other material.

(b) Forward to the Regional Director for Region 9 signed copies of the notices for posting by the Respondent Employer in places where notices to employees are customarily posted.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT act as exclusive collective-bargaining representative of the employees in the unit described below, unless and until certified by the Board as the collective-bargaining representative of the employees pursuant to Section 9 of the Act:

All employees employed by Anthony Crane Rental, Inc. and Republic Crane, Inc. [the Employer] at its shop located at 101 Independence Avenue, Nitro, West Virginia, excluding employees represented by the International Union of Operating Engineers, Local Union No. 132, AFL-CIO, salesmen, office clerical employees, professional employees and guards and supervisors as defined in the Act.

WE WILL NOT maintain, enforce, or give effect to the collective-bargaining agreement we entered into with the Employer about October 1, 1993.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

UNITED SERVICES OF AMERICA LABOR UNION

Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."